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Attorneys for Respondent SAN RAFAEL CITY SCHOOLS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAN RAFAEL CITY SCHOOLS

Plaintiff,

vs.

OFFICE OF ADMINISTRATIVE HEARINGS,
CALIFORNIA DEPARTMENT OF
EDUCATION, and JACK O'CONNELL,
SUPERINTENDENT) OF PUBLIC
INSTRUCTION, in his official capacity,

Defendants,

and

T.M., a minor,

Real Party in Interest

Case No. C07-04702

**NOTICE OF MOTION AND
MOTION TO COMPEL
ALTERNATIVE DISPUTE
RESOLUTION AND FOR
EXTENSION OF DUE DATE
FOR FILING OF SUMMARY
JUDGMENT MOTION;
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Date: December 20, 2007
Time: 8:00 a.m.
Dept.: Courtroom 9, 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Hon. William Alsup

PLEASE TAKE NOTICE that on December 20, 2007, at 8 a.m., or as soon thereafter as the matter may be heard, in Courtroom 9 of the United States Court House for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102,, that Plaintiff SAN RAFAEL CITY SCHOOLS (hereafter "the District") will move this court for an order compelling referral of this matter to this court's Alternative Dispute Resolution Multi-Option Program as between the District, and Real Party In Interest, Travis Mellor, and for an extension of time for the filing of a summary judgment motion by the District until thirty days from the conclusion of that mediation.

1 This motion will be based on this notice of motion and motion, the supporting
 2 memorandum of points and authorities, the Declaration of David E. Lyon, oral argument and any
 3 other material properly before this court.

4 Dated: November 15, 2007

Respectfully submitted,

RUIZ & SPEROW, LLP

By: 
 DAVID E. LYON

Attorneys for Plaintiff
 SAN RAFAEL CITY SCHOOLS

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 Plaintiff SAN RAFAEL CITY SCHOOLS (hereafter "the District") hereby submits its
 12 memorandum of points and authorities in support of its motion to compel referral of this matter to
 13 this court's Alternative Dispute Resolution Multi-Option Program and for an extension of time to
 14 file a motion for summary judgment in this matter until thirty days after that participation has
 15 occurred.

16 PROCEDURAL AND FACTUAL BACKGROUND

17 This matter is an appeal of the administrative decision by the California Office of
 18 Administrative Hearings, Special Education Division ("OAH"), in STUDENT, v. SAN RAFAEL
 19 CITY SCHOOLS, No. N2007050679 ("the decision") on the due process complaint of real party in
 20 interest, T.M.. ("Real Party"), brought under the Individuals with Educational Disabilities Act
 21 ("IDEA"), 20 U.S.C. §§1400, et seq., and enacting California legislation, California Education
 22 Code §§5600, et seq.

23 The District is appealing this decision on multiple grounds including, but not limited to,
 24 misapplication of the applicable legal standard, misapplication of the evidentiary value of results
 25 testing, failure to consider the propriety of services as to real party's age, and the decision's glaring
 26 failure to take into account the bulk of the services offered to Real Party. Despite those failures,
 27 the hearing officer nevertheless denied 8 of Real Party's 13 claims, and awarded him about half of
 28 the monetary amount he was requesting.

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1 While this matter was initially referred to this court's "ADR Multi-Option Program," that
 2 referral was withdrawn by order dated October 1, 2001. Order, dated October 1, 2007, a true and
 3 correct copy of which is attached as Exhibit 1 to Declaration of David E. Lyon in Support of
 4 Motion for Referral to Alternative Dispute Resolution ("Lyon Dec."). In addition, that order
 5 provided that the District is to serve and file a motion for summary judgment within 30 days of
 6 receipt of the hearing transcript from the OAH, among other deadlines and provisions. *Id.*

7 ARGUMENT

8 I. This Court Should Order The Parties To Participate In An Alternative Dispute 9 Resolution Procedure.

10 This District's local alternative dispute resolution rules, ADR 9, provides that the court may
 11 refer a matter to alternative dispute resolution on motion of a party or on the court's own initiative.
 12 *See also* "ADR[:]Dispute Resolution Procedures in the Northern District of California" ("ADR
 13 Booklet") at 21.

14 The benefits of alternative dispute resolution procedures are well recognized, and underly
 15 this court's well developed alternative dispute resolution program. As described in this court's
 16 ADR Booklet:

17 While traditional litigation can serve parties' interest well in some
 18 situations, many cases have needs that can be better met through
 19 other procedures.ADR processes can offer numerous
 20 advantages over both formal litigation and direct negotiations
 21 between the parties. In contrast to formal litigation and direct
 22 negotiations, ADR procedures may lead to resolutions that are:

- 23 • faster
- 24 • less expensive
- 25 • more creative
- 26 • better tailored to all parties' underlying interests

27 [The United States District Court for the Northern District of
 28 California has] committed substantial resources to our ADR
 programs because we are confident that litigants who use them
 conscientiously can save significant money and time and will often
 obtain more satisfying results.

Those benefits include efficient use of time and money, and the promise of reaching a
 mutually acceptable solution, a benefit of particular importance here given the ongoing relationship
 between the District and Real Party, who will likely be a student within District schools for many

1 years hence.

2 In addition, this matter would specifically benefit from such referral. The parties have had
3 some discussions about possible settlement, and have endeavored to figure out a mutually
4 acceptable alternative dispute resolution modality, although without success. Lyon Dec. at ¶¶2-3.
5 The District believes that such referral could well lead to settlement. *Id.*

6 Related to the request for referral to alternative dispute resolution, and in order to preserve
7 the value of that process, the District requests that the due date for filing of the initial summary
8 judgment motion in this matter be extended until 30 days from the date at which such alternative
9 dispute resolution occurs. In that manner, the District will not be required to begin incurring the
10 cost of preparing its motion for summary judgment until the parties' have had a full opportunity to
11 avail itself of the alternative dispute resolution procedures offered by the court.

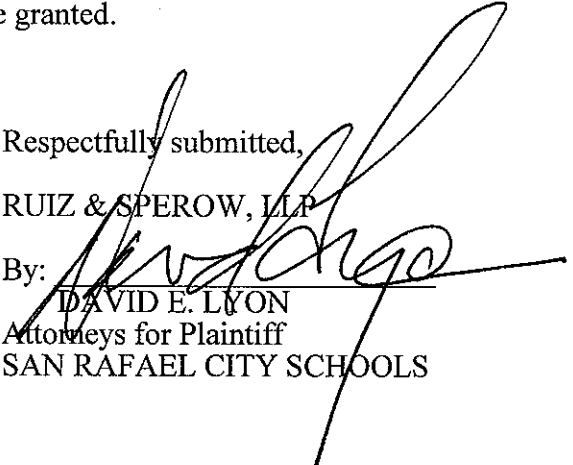
12 CONCLUSION

13 For the foregoing reasons, the San Rafael City School's motion to compel participation in
14 an alternative dispute resolution procedure should be granted.

15
16 Dated: November 15, 2007

Respectfully submitted,

RUIZ & SPEROW, LLP

By: 
DAVID E. LYON
Attorneys for Plaintiff
SAN RAFAEL CITY SCHOOLS

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2000 Powell Street, Suite 1655, Emeryville, California 94608. On November 15, 2007, I caused the following document(s) in U.S.D.C. N.D.Ca Case No. C07-04702, referred to as *San Rafael City Schools vs. Office of Administrative Hearings, et al. and T.M., a minor, Real Party in Interest*, to be served by the method indicated below:

Notice of Motion & Motion to Compel Alternative Dispute Resolution and for Extension of Due Date for Filing of Summary Judgment Motion; Memorandum of Points & Authorities in Support;

Declaration of David Lyon in Support of Motion to Compel Alternative Dispute Resolution and for Extension of Time to File Motion for Summary Judgment;

[Proposed] Order

☒ by transmitting via facsimile on this date from fax number 510-594-7988 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmitting fax machine complies with Cal.R.Ct 2003(3).

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Emeryville, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration. *Hector Portillo only*

☐ by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

☒ by transmitting via email to the person(s) at the email address(es) listed below.

Broussard only

Margaret Broussard
Law Office of Margaret Broussard
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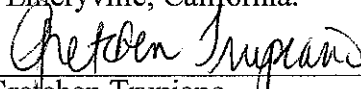
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1 Mr. Hector Portillo
2 Office of Administrative Hearings
3 Special Education Division
4 2349 Gateway Oaks Drive, Suite 200
5 Sacramento, CA 95833-4231
6 Fax No.: 916 376-6319

7 I declare under penalty of perjury under the laws of the State of California that the above is
8 true and correct. Executed on November 15, 2007, at Emeryville, California.

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Gretchen Trupiano

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FACSIMILE TRANSMITTAL COVER SHEET

TO: HECTOR PORTILLO, OFFICE OF ADMINISTRATIVE HEARINGS

FROM: DAVID LYON

FACSIMILE #

916 376-6319

DATE SENT: NOVEMBER 15, 2007

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